

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE COUNTY
INTEREST-ARBITRATION PANEL**

**IN THE MATTER OF THE
INTEREST ARBITRATION BETWEEN:**

**RHODE ISLAND STATE
TROOPERS ASSOCIATION**

and

**STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS.**

**(Setting of wages for the third year of the CBA that
was effective from May 1, 2010 through April 30, 2013)**

Neutral arbitrator & panel chair:	Vincent F. Ragosta, Jr., Esq.
Association-designated arbitrator:	Anthony A. Giannini, Jr., Esq.
State-designated arbitrator:	Susan K. Rodriguez, Esq.
State's representative:	Lori Caron Silveira, Esq.
Association's representatives:	Robert J. Moss, Esq., Labor Consultant Richard D. Locke, Esq., Labor Consultant

DECISION AND AWARD

The Rhode Island State Troopers Association ("Association") and the State of Rhode Island and Providence Plantations ("State") were parties to a collective bargaining agreement effective May 1, 2010 through April 30, 2013 ("CBA"). The parties empowered this interest-arbitration panel ("panel") to resolve their differences with respect to the salary to be paid to Rhode Island state police officers below the rank of lieutenant (collectively "troopers") for the CBA year that ran from May 1, 2012 through April 30, 2013. The panel held hearings and received evidence in that regard on February 12, 13, 14, 15 and March 4, 2013. After hearing the witnesses and reviewing the transcripts of their testimony, after reviewing the voluminous documentary evidence submitted, and after considering and discussing the arguments and

memoranda submitted by the parties, the panel now renders its “written findings and a written opinion upon the issues presented,” R.I.G.L. § 28-9.5-9(b).

For the reasons provided below, and based upon the evidence submitted, the panel awards as follows: for the third year of the expired CBA that was effective May 1, 2010 through April 30, 2013, that is, for the term May 1, 2012 through April 30, 2013, troopers shall receive a 3% increase in annual salary relative to the annual salary that they received for working May 1, 2011 through April 30, 2012.

BACKGROUND

The parties negotiated and agreed to the CBA submitted in evidence as Joint Exhibit 1. Pursuant to that CBA, troopers received a 3% salary increase during the first CBA year and a 3% salary increase during the second CBA year. However, for the third CBA year, which ran from May 1, 2012 to April 30, 2013, the parties agreed that:

“(b) The issue of wages for the final year of this Agreement (May 1, 2012 to April 30, 2013) shall be subject to a wage re-opener. The Parties will re-open negotiations on this issue if the Association submits a written request to do so, said request to be delivered to the Director of the Department of Administration in the month of March, 2012. In the event the Parties are unable to reach an agreement on the wage issue for the final year of this Agreement, the issue shall be submitted for resolution through arbitration pursuant to the applicable procedures and terms set forth in the State Police Arbitration Act, Rhode Island General Laws, Sections 28-9.5-7 through 28-9.5-11 and Sections 28-9.5-14 through 28-9.5-16.” CBA, Art. VI, § 6.1(b), at 13 (Joint Exhibit 1).

Having been unable to reach an agreement on the wage issue for the final year of their CBA, the parties submitted that issue for arbitration in accordance with the terms of their CBA. The State does not challenge the Association’s assertion that “[t]here is no dispute that the requisites for interest arbitration of this dispute have been satisfied,” Post-Hearing Brief Filed on Behalf of the Rhode Island State Troopers Association, at 1 n.2.

However, although it is clear that this panel is an interest-arbitration panel in the sense that this arbitration concerns arbitration to set a term of a collective bargaining agreement, *see City of Pawtucket v. Pawtucket Lodge No. 4, Fraternal Order of Police*, 545 A.2d 499, 500 n.1 (R.I. 1988) (“[i]nterest arbitration concerns arbitration to set the terms of a collective-bargaining agreement”); *see also Town of North Kingstown v. North Kingstown Firefighters, Local 1651, International Association of Firefighters, AFL-CIO*, C.A.WC2012-0542 (Superior Court of Rhode Island, Dec. 14, 2012) (Stern, J.) (“Interest arbitration is defined as ‘[a]rbitration that involves settling the terms of a contract being negotiated between the parties; esp., in labor law, arbitration of a dispute concerning what provisions will be included in a new collect[ive]-bargaining agreement.’ Black’s Law Dictionary 100 (7th ed. 1999).”), it is not quite as clear that it is such pursuant to the State Police Arbitration act¹ because this arbitration does not appear to have technically arisen under the terms of that act but arose rather pursuant to the parties’ agreement to be bound by certain provisions of that act in settling the wages at issue herein. In any event, and whatever the implications, if any, of the parties’ chosen interest-arbitration methodology may be,² it is clear that for present purposes the panel is at least a CBA-empowered interest-arbitration panel to be guided by at least those sections of the State Police Arbitration act’s provisions that the parties designated and that as such the “interest arbitrators for the parties can do anything that the parties could have agreed to do,” *Fraternal Order of Police, Westerly*

¹ Chapter 9.5 of title 28 of the Rhode Island General Laws.

² For example, if the source of this panel’s authority is not the State Police Arbitration act but solely the agreement of the parties, then any review process may differ. *Compare* R.I.G.L. § 28-9.5-14 (“[t]he sole avenue of review of a decision of an arbitration panel issued pursuant to this chapter [that is, the State Police Arbitration act] shall be by petition for writ of certiorari to the supreme court”) *with* R.I.G.L. § 28-9-14 (“[a]rbitration of a controversy under a contract or submission described in this chapter [that is, the Arbitration of Labor Controversies act] shall be deemed a special proceeding, of which the superior court . . . shall have jurisdiction”).

Lodge No. 10 v. Town of Westerly, 659 A.2d 1104, 1106 (R.I. 1995), with respect to trooper wages for May 1, 2012 through April 30, 2013.

**RELEVANT PROVISIONS OF THE CBA
(Joint Exhibit 1)**

ARTICLE I

RECOGNITION

1.1 The State hereby recognizes the Association as the sole and exclusive bargaining agent for all employees within the bargaining unit, said bargaining unit to consist of all State Policeman [sic] below the rank of Lieutenant
...

ARTICLE VI

SALARIES

...
(b) The issue of wages for the final year of this Agreement (May 1, 2012 to April 30, 2013) shall be subject to a wage re-opener. The Parties will re-open negotiations on this issue if the Association submits a written request to do so, said request to be delivered to the Director of the Department of Administration in the month of March, 2012. In the event the Parties are unable to reach an agreement on the wage issue for the final year of this Agreement, the issue shall be submitted for resolution through arbitration pursuant to the applicable procedures and terms set forth in the State Police Arbitration Act, Rhode Island General Laws, Sections 28-9.5-7 through 28-9.5-11 and Sections 28-9.5-14 through 28-9.5-16.
....

RELEVANT STATUTES

§ 28-9.5-7. Unresolved issues submitted to arbitration

In the event that the bargaining agent and the state authorities are unable within thirty (30) days from and including the date of their first meeting to reach an agreement on a contract, any unresolved issues shall be submitted to arbitration.

§ 28-9.5-8. Arbitration board - Composition

(a) Within five (5) days from the expiration of the thirty (30) day period referred to in § 28-9.5-7, the bargaining agent and the state authorities shall each select

and name one arbitrator and shall immediately notify each other, in writing, of the name and address of the person selected.

(b) The two (2) arbitrators selected and named shall, within ten (10) days from and after the expiration of the five (5) day period above, agree upon and select and name a third arbitrator. If, on the expiration of the period allowed, the arbitrators are unable to agree upon the selection of a third arbitrator, the chief justice of the Rhode Island supreme court shall select a resident of Rhode Island, or a person whose place of business or principal place of employment is in Rhode Island, as the third arbitrator upon request, in writing, from either the bargaining agent or the state authorities.

(c) The third arbitrator, whether selected as a result of agreement between the two (2) previously selected arbitrators or selected by the chief justice, shall act as chairperson of the arbitration board.

§ 28-9.5-9. Hearings

(a) (1) The arbitration board shall, acting through its chairperson, call a hearing to be held within ten (10) days after the date of the appointment of the chairperson, and shall, acting through its chairperson, give at least seven (7) days notice, in writing, to each of the other two (2) arbitrators, the bargaining agent, and the state authorities of the time and place of the hearing.

(2) The hearing shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence.

(3) The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination.

(b) The hearing conducted by the arbitrators shall be concluded within twenty (20) days of the time of commencement, and within ten (10) days after the conclusion of the hearings, the arbitrators shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the bargaining agent or its attorney or otherwise delegated representative and to the state authorities. A majority decision of the arbitrators shall be binding upon both the bargaining agent and the state authorities.

28-9.5-10. Factors to be considered by arbitration board

The arbitrators shall conduct the hearings and render their decision upon the basis of a prompt, peaceful, and just settlement of wage or hour disputes between the state police and the state. The factors, among others, to be given weight by the arbitrators in arriving at a decision shall include:

(1) Comparison of wage rates or hourly conditions of employment of the state police with prevailing wage rates or hourly conditions of employment of skilled employees of the building trades and industry in the state.

(2) Comparison of wage rates or hourly conditions of employment of the state police with wage rates or hourly conditions of employment of state police departments in other states.

(3) Interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically:

- (i) Hazards of employment;
- (ii) Physical qualifications;
- (iii) Educational qualifications;
- (iv) Mental qualifications;
- (v) Job training and skills.

§ 28-9.5-11. Fees and expenses of arbitration

Fees and necessary expenses of arbitration shall be equally borne by the bargaining agent and the state. Notwithstanding any other remedies which a court appointed arbitrator appointed by the chief justice pursuant to § 28-9.5-8 may have, the arbitrator or a party who has paid its share of the fees and necessary expenses of a court appointed arbitrator may petition the superior court for sanctions against the party failing to make timely payment of its share of the arbitrator's fees and expenses, and the superior court is authorized to enforce the sanctions against the nonpaying party, including, but not limited to, contempt powers pursuant to § 8-6-1.

§ 28-9.5-14. Writ of certiorari to the supreme court

The sole avenue of review of a decision of an arbitration panel issued pursuant to this chapter shall be by petition for writ of certiorari to the supreme court. In the event a decision of the arbitration panel is sought to be reviewed by writ of certiorari to the supreme court, the matter shall be given priority by the supreme court.

§ 28-9.5-15. Attorneys' fees, costs, and interest

In the event either the bargaining agent or the state authorities files a petition for writ of certiorari to the supreme court of the state of Rhode Island for a review or modification of a majority decision of the arbitrators, which by the provisions of § 28-9.5-9 is binding upon both the bargaining agent and the state authorities, the party against whom the decision of the supreme court is adverse, if the supreme court finds the appeal or petition to be frivolous, shall pay reasonable attorneys' fees and costs to the successful party as determined by the supreme court, and the supreme court shall in its final decision or judgment award the costs and reasonable attorneys' fees. If the final decision affirms the award of money, the award, if retroactive, shall bear interest at the rate of eight percent (8%) per annum from the effective retroactive date.

§ 28-9.5-16. Severability

If any provision of this chapter, or its application to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this chapter and the application of the provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected by the invalidity.

DISCUSSION AND AWARD

“[T]he maintenance of a state police force is a governmental function that is carried out for the paramount public purpose of providing for the safety of the citizens of this state. Obviously the members of such a police force must be paid,” *State v. Rhode Island State Police Lodge No. 25*, 544 A.2d 133, 135 (R.I. 1988). The question herein is how much they must be paid for the May 1, 2012 through April 30, 2013 time period to produce a “prompt, peaceful, and just settlement” of the parties’ wage dispute. Actually, the parties have implicitly agreed that such wages shall not be less than that paid to troopers for the May 1, 2011 through April 30, 2012 CBA year, the last year for which an agreement was made. In any event, before considering the wage question further, the panel first disposes of a few preliminarily matters.

The Association argued on page 45 of its memorandum that “[b]y clear and overwhelming evidence, the Association has established that, applying the factors set forth in R.I.G.L. § 28-9.5-10, the Arbitration Panel should award to the Association a fair and reasonable wage increase amounting to 5.5 percent for the last year of the CBA.”³ The State, contrarily, argued on page 1 of its memorandum that “given all of the relevant circumstances, including dire economic conditions and all of the other factors cited in the State Police Arbitration Act . . . wage increases for the . . . [CBA] should be limited to the two-year, 6% increase (3% and 3%

³ The Association also invited the panel to award an increase of more than 5.5% but one “that is commensurate with the totality of factors set forth as well as to meet the vital need to maintain a highly efficient and well performing Department to protect and serve the people of Rhode Island” because even a 5.5% increase would allegedly be inadequate.

compounded) that the parties negotiated in 2011 . . . [because] the State cannot afford to allocate more of its revenue to state police labor costs.” Moreover, the State argued in its reply brief that the Association waived and/or is estopped from seeking a 5.5% wage increase because it “did not define its wage proposal either at the bargaining table as required by R.I. Gen. Laws § 28-9.5-6 or in the arbitration proceedings as required by R.I. Gen. Laws § 28-9.5-7” but has rather “for the first time [and in violation of its obligation to bargain in good faith], in its Post-Hearing Brief . . . quantified its demand at 5.5%.” The panel disagrees with the State’s position.

Section 28-9.5-6 was not one of the sections that the parties expressly agreed would govern their wage re-opener and this interest arbitration. But even assuming that § 28-9.5-6 applied, it is not for this panel to determine whether the Association violated any obligation of good-faith bargaining. *See* R.I.G.L. § 28-7-13.1(2) (“[i]t shall be an unfair labor practice for public sector employee organizations, their agents, or representatives to . . . [f]ail to negotiate or bargain in good faith with the duly authorized representatives of the public employer”); *MacQuattie v. Malafronte*, 779 A.2d 633, 635 n.2 (R.I. 2001) (“[e]xclusive original jurisdiction in unfair labor cases is generally in the State Labor Relations Board under the State Labor Relations Act, § 28-7-21, and [even] the Superior Court does not have jurisdiction until administrative remedies have been exhausted”). And while it is true that the Association’s labor consultant stated in his opening that “we come before the panel today to not seek here a wage increase, I’m just trying to limit our losses” allegedly resulting from certain recently-effective legislation, the methodology by which the Association wished to limit such “losses” was a wage increase which was contested by the State in their pre-arbitration negotiations. The net result was an “unresolved issue,” albeit one of indeterminate dimension given the Association’s apparent failure to quantify its desired wage increase previously. Moreover, although the State asserts that

“[n]ow, for the first time, in its Post-Hearing Brief, the Union has quantified its demand at 5.5%,” in its opening statement at the hearings, the Associations’ labor consultant stated that “it is our initial position for your consideration that it would take in excess of five and a half percent increase just to reduce the losses just to minimize the negative economic impacts,” Trans. 8: 21-24 (Feb. 12, 2013). It was thus clear from the very outset of this proceeding that the Association was seeking a wage increase. Accordingly, the panel disagrees with the State’s argument that the Association waived and/or is estopped from seeking a 5.5%, or any other specified, wage increase.

Next, the State also suggested that “the Union has failed to carry its burden of persuasion in these proceedings,” Post-Hearing Brief of the State of Rhode Island, Department of Administration, at 15, to which the Association replied by stating that “in interest arbitration of wage disputes, the ‘default’ is not a 0% increase nor is it the Association’s ‘burden’ to demonstrate entitlement to any increase,” Post-Hearing Brief Filed on Behalf of the Rhode Island State Troopers Association, at 2 n.2. To clarify, the panel was of the opinion that neither party had a burden of proof to the exclusion of the other. Rather, each party had a burden of offering such evidence as it deemed relevant and arguing how the admitted evidence supported its position. The panel, in turn, now has the burden to render a decision “upon the basis of a prompt, peaceful, and just settlement” of their wage difference starting neither from the position that an increase is not due nor from the position that an increase is due, but letting a consideration of the factors dictate any award.

The final preliminary matter was that the State appended to its post-hearing memorandum four documents: a one-page document titled “Median Family Income in the Past 12 Months (in 2011 Inflation-adjusted Dollars) by Family Size” containing estimates of income for variously-

sized families in Connecticut, Massachusetts, and Rhode Island (attached as Tab A to the State's memorandum); a one-page document comprised of "Table 647. Average Annual Wage [per employee], by State: 2008 and 2009" from the U.S. Census Bureau, Statistical Abstract of the United States: 2012 (Tab B); a two-page document excerpted from "H-5127 FY 2014 Appropriations Act (Article 10-FY13 Supplemental)" (Tab C); and a one-page document comprised of "Table 17. Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W): Selected areas, all index items" (Tab D).⁴ The Association objected by e-mail to the inclusion of these documents and argued in its reply brief that the panel should give them no consideration. The State responded by e-mail arguing that "[i]n preparing a brief, counsel is expected to cite to authorities of all kinds—cases, statutes, treatises, and other authorities" and that the attached documents are "published authorities" or law.

With respect to the State's attachment of a portion of H-5127 (Tab C), the panel overruled the Association's objection because the panel concluded that it may take arbitral notice of Rhode Island's laws. *See generally Fleet Nat'l Bank v. Clark*, 714 A.2d 1172, 1180 n.12 (R.I. 1998) ("Under Rhode Island law every court in this state is empowered to take judicial notice of the common law and statutes of every state, territory and other jurisdictions of the United States. *See* G.L.1956 § 9-19-3; *see also* 9 Wigmore on Evidence § 2573, at 765-66 (Chadbourn rev.

⁴ The Association attached a document to its post-hearing memorandum as well: a three-page document produced by the U.S. Census Bureau titled "State & County QuickFacts Rhode Island." The State had already submitted that same document in evidence but the Association argued that the State's version was inadvertently incomplete and thus it requested leave to substitute its complete version for the State's inadvertently incomplete version. The panel compared the relevant exhibit, State Exhibit 14A, with the Association's version, as well as with similar exhibits entered in evidence for the states of Massachusetts, Connecticut, Delaware, Maine, New Hampshire, and Vermont, State Exhibits 14B-14G. A small amount of data was in fact missing from State Exhibit 14A. Because the State did not object to the Association's request and because the omission did not appear to the panel to be intentional given the benign nature of the omitted information, the panel granted the Association's request to substitute its version for State Exhibit 14A.

1981).”) *Waz v. Estate of Judge*, 417 A.2d 326, 329 (R.I. 1980) (“courts of a state take judicial notice of its public statutes”). The panel also overruled the Association’s objection to Tab A because the State submitted that identical document, albeit in landscape format rather than portrait, in evidence as State Exhibit 25.⁵ Accordingly, the State’s attachment of Tab A was mere superfluity and the Association’s objection to it was overruled.

However, a different conclusion is compelled with regard to the other two attachments, Tabs B and D. Although the hearing was informal, the rules of evidence inapplicable, and “[a]ny and all documentary evidence and other data deemed relevant by the arbitrators . . . [was] received in evidence,” the hearing is not open-ended but has a conclusion. *See* R.I.G.L. § 28-9.5-9(b) (“[t]he hearing conducted by the arbitrators shall be concluded within twenty (20) days”). And that conclusion came on March 21, 2013 when the chair informed the parties, after receiving notice from them that they had resolved some un-related post-hearing evidentiary issues for which the record was left open, that he “deem[ed] the record complete as of today, March 21.” Although the hearing conducted by the panel was neither a trial nor even a contested administrative proceeding governed by the APA, the panel was guided by the Rhode Island Supreme Court’s teaching in those contexts. In *DeMelo v. Zompa*, 844 A.2d 174 (R.I. 2004) the Court held that “[a]bsent a motion to reopen the case, plaintiff may not present additional evidence after the parties have rested. In this case, both sides had rested prior to plaintiff’s attempt to offer what essentially was new evidence appended to her post-trial memorandum. . . . Accordingly, the trial court did not abuse its discretion in striking plaintiff’s post-trial memorandum.” And in *Arnold v. Lebel*, 941 A.2d 813, 821 (R.I. 2007), the Court held that in

⁵ Inadvertently, two State Exhibit 25s were received in evidence on March 4, 2013: the first was a one-page document titled “Median Family Income in the Past 12 Months (in 2011 Inflation-adjusted Dollars) by Family Size” and the second was a collective bargaining agreement between the parties effective May 1, 2009 through April 30, 2010.

APA administrative agency adjudications of contested cases, “all evidence that is received or considered must be on the record.” Finally, a Superior Court justice has stated that even under the liberalized evidentiary standard applied in administrative adjudications (which is admittedly not as liberal as that applied in interest arbitration), a hearing officer should not have relied on “evidence” contained solely in a post-hearing brief. *See Horbet v. New Penn, Inc.*, C.A. PC2009-6960 (Superior Court of Rhode Island, Jan. 10, 2011) (Vogel, J.). While cognizant of the informality of, and the wholesale inapplicability of the rules of evidence to, these proceedings, given these pronouncements the panel felt constrained to uphold the Association’s objection with respect to the State’s Tabs B and D. Accordingly, those documents were given no weight by the panel.⁶

Having addressed the preliminaries, the panel now turns to the relevant factors to be considered in rendering its award. Pursuant to R.I.G.L. § 28-9.5-10, which the parties agreed would control the panel’s decision, the following factors, among others, were given weight in rendering a just settlement of their wage dispute:

- “(1) Comparison of wage rates or hourly conditions of employment of the state police with prevailing wage rates or hourly conditions of employment of skilled employees of the building trades and industry in the state.
- (2) Comparison of wage rates or hourly conditions of employment of the state police with wage rates or hourly conditions of employment of state police departments in other states.
- (3) Interest and welfare of the public.
- (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically:
 - (i) Hazards of employment;
 - (ii) Physical qualifications;

⁶ The panel chair acknowledges having said at the hearing that “I’m not going to hold either party to the technical requirements of resting and reopening because of the inherent informality of arbitration,” Trans. 96: 6-8 (March 4, 2013). However, that was spoken in the context of an offer to submit documentary evidence during rebuttal while the record was open and did not implicate the question of submitting evidence by attaching it to a post-hearing memorandum after the record was closed.

- (iii) Educational qualifications;
- (iv) Mental qualifications;
- (v) Job training and skills.”

Before addressing each factor in turn, the panel notes that it did not attach any significance to the ordering of the factors. For example, factor one was not given any more weight solely because of its placement as factor one. Rather, each factor was given such relative weight as its evidentiary support and related arguments warranted. Moreover, the panel disagrees with the Association’s argument that “evidence on factors falling outside the specifically-enumerated statutory provisions of this section are not properly considered by the Arbitration Panel,” Post-Hearing Brief Filed on Behalf of the Rhode Island State Troopers Association at 3. The panel’s plain-meaning reading of § 28-9.5-10, in light of § 28-9.5-9’s allowance that “[a]ny and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence,” led the panel to conclude that the enumerated factors *must* be given weight but that other factors, such as the State’s ability to pay, *may* be given weight as well.

I
**COMPARING THE WAGE RATES OR HOURLY CONDITIONS OF
EMPLOYMENT OF THE STATE POLICE WITH THE PREVAILING
WAGE RATES OR HOURLY CONDITIONS OF EMPLOYMENT OF
SKILLED EMPLOYEES OF THE BUILDING TRADES AND INDUSTRY
IN THE STATE.**

For the last agreed-to CBA salary year, the base salary for bargaining unit members ranged from \$50,799 for a probationary trooper during their first five months of employment to \$80,053 for a detective sergeant during their fourth year of employment. CBA, Schedule 00, Unclassified Annual Salaries, State Police, May 1, 2011 (Joint Exhibit 1). The CBA also required that “[m]embers shall be scheduled to work forty nine and one half (49½) hours during the basic work week. Members shall be paid overtime at a time and one-half rate for all scheduled hours over forty-two (42).” CBA, Art. IV, § 4.3 at 5 (Joint Exhibit 1). While not

limited to skilled employees of the building grades, according to the U.S. BLS Occupational Employment Statistics' May 2011 State Occupational Employment and Wage Estimates for Rhode Island, the annual mean wage estimate "calculated with data collected from employers in all industry sectors in metropolitan and non-metropolitan areas in Rhode Island" was \$47,390. State Exhibit 18A. And according to a U.S. Census report, the median household income for 2007-2011 was \$55,975 in Rhode Island. State Exhibit 14A. Finally, according to a wage determination available from the federal department of labor, the hourly wage rates required in Newport County⁷ for various skilled trades ranged from \$16.55 for a painter to \$30.68 for a roofer. State Exhibit 15.⁸ Annualizing these amounts based on a trooper's non-overtime workweek reveals that a painter working a 42-hour work week (49½ scheduled work hours minus the 7½ hours paid as overtime) at \$16.55 per hour would earn an annual salary of \$36,145.20 and a roofer working a 42-hour work week at \$30.68 per hour would earn an annual salary of \$67,005.12. A trooper salary range of \$50,799 to \$80,053 does not strike the panel as one necessitating correction in comparison to a range of \$36,145.20 to \$67,005.12 for skilled trade employees, especially given the state's median household income of \$55,975.

Moreover, as the State points out, "wage rates in the construction trades have little significance if workers are not actually working at those rates," Post-Hearing Brief of the State of Rhode Island, Department of Administration, at 8, and the State convincingly argues that Rhode Island's construction industry faced significant, indeed nation-leading, unemployment rates. Unlike the building industry's relatively dire employment, the state police was apparently

⁷ Although Newport County is of course not coterminous with the state, it is nevertheless "in the state" and thus the document was of some value to the panel's task.

⁸ The State also submitted similar data for dredging-related projects, but the panel did not attribute much weight to this data. Moreover, having received no argument as to what a "skilled employee" was, the panel made its own assessment of the meaning of that term.

an enviable position in light of the fact that only one trooper has left the force to accept other employment in recent years.

In the end analysis, the panel did not conclude that this factor weighed in favor of increased compensation.

II

COMPARING THE WAGE RATES OR HOURLY CONDITIONS OF EMPLOYMENT OF THE STATE POLICE WITH THE WAGE RATES OR HOURLY CONDITIONS OF EMPLOYMENT OF STATE POLICE DEPARTMENTS IN OTHER STATES.

The Association argued that Massachusetts and Connecticut were the appropriate comparators and that in comparison with the state police in those states the troopers were “grossly underpaid.” The State argued that Maine, New Hampshire, Vermont, and Delaware were the appropriate states with which to compare Rhode Island troopers’ wages but that even when compared to Massachusetts and Connecticut, the troopers were “paid competitively . . . when other monetary benefits . . . are considered.” Given the statutory mandate to compare wages rates or hourly conditions with those of “other states,” the panel considered *all* of the offered states, including the additionally referenced states of New York and New Jersey, albeit to a lesser extent because not as much comparative evidence was introduced with respect to those two states.

The following rankings were prepared from State Exhibits 14A (as substituted by the Association’s version) through 14G (U.S. Census Bureau State & County Quick Facts):

<u>State</u>	<u>2012 Population Estimate</u>
MA	6,646,144
CT	3,590,347
ME	1,329,192
NH	1,320,718
RI	1,050,292
DE	917,092
VT	626,011

<u>State</u>	<u>2012 Population, percent change, April 1, 2010 to July 1, 2012</u>
DE	2.1%
MA	1.5%
CT	0.5%
NH	0.3%
ME	0.1%
VT	greater than 0 but less than 0.1%
RI	-0.2%

<u>State</u>	<u>Land area in Square Miles, 2010</u>
ME	30,843
VT	9,217
NH	8,953
MA	7,800
CT	4,842
DE	1,949
RI	1,034

<u>State</u>	<u>Persons per square mile, 2010</u>
RI	1,018
MA	839
CT	738
DE	461
NH	147
VT	68
ME	43

<u>State</u>	<u>Median Household Income, 2007-2011</u>
CT	\$69,243
MA	\$65,981
NH	\$64,664
DE	\$59,317
RI	\$55,975
VT	\$53,422
ME	\$47,898

<u>State</u>	<u>Per capita money income in the past 12 months (2011 dollars), 2007-2011</u>
CT	\$37,627
MA	\$35,051
NH	\$32,357
RI	\$29,685
DE	\$29,659
VT	\$28,376
ME	\$26,195

<u>State</u>	<u>Median Value of owner-occupied housing units, 2007-2011</u>
MA	\$343,500
CT	\$293,100
RI	\$270,600
NH	\$250,000
DE	\$244,100
VT	\$213,000
ME	\$176,600

The following rankings were prepared from State Exhibits 18A through 18G (U.S. BLS

Occupational Employment Statistics, May 2011):

<u>State</u>	<u>Annual Mean Wage</u>
MA	\$54,740
CT	\$52,830
DE	\$47,420
RI	\$47,390
NH	\$45,220
VT	\$43,080
ME	\$40,190

<u>State</u>	<u>Mean Hourly Wage</u>
MA	\$26.32
CT	\$25.40
DE	\$22.80
RI	\$22.78
NH	\$21.74
VT	\$20.71
ME	\$19.32

The following rankings were prepared from Association Exhibit 30 (F.B.I. Uniform Crime Reports, Table 4, Crime in the United States by Region, Geographic Division, and State, 2010-2011).

<u>State</u>	<u>Number of Violent Crimes in 2011</u>
NY	77,490
MA	28,219
NJ	27,203
CT	9,767
RI	2,602
NH	2,478
ME	1,636
VT	847

(DE No data provided in evidence)

<u>State</u>	<u>Rate of Violent Crimes per 100,000 of population in 2011</u>
MA	428
NY	398
NJ	308
CT	273
RI	248
NH	188
ME	123
VT	135
(DE	No data provided in evidence)

In analyzing this data, the panel notes that it was cognizant of the F.B.I.'s warning in its Uniform Crime Report that "individuals using these tabulations are cautioned against drawing conclusions by making direct comparisons between cities. Comparisons lead to simplistic and/or incomplete analysis."

From the foregoing tables, the panel concluded that Delaware and New Hampshire were most comparable to Rhode Island in terms of population, income, and wages. From its common knowledge, the panel concluded that Massachusetts and Connecticut were most comparable in terms of physical proximity, and from the testimony, the occasional state police working relationship. However, Massachusetts and Connecticut were not too comparable otherwise (except perhaps for population density, which Rhode Island topped ahead of Massachusetts and Connecticut). Rhode Island stood alone in terms of physical size and population loss. Finally, Rhode Island did not approach Massachusetts or Connecticut with respect to the overall number of violent crimes, in which it was very comparable to New Hampshire, but it was comparable to New Hampshire and Connecticut with regard to its rate of violent crime.

Turning now to a comparison of wages paid to various state troopers, from the appendix attached to the Association's memorandum (to which the State did not object or comment), and

the collective bargaining agreements in evidence, the following tables of annual salary ranges were created:

New York⁹ (Effective April 1, 2010)

Trooper	\$66,905 (for a Trainee 2) to \$84,739
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Massachusetts¹⁰ (Rates effective December 31, 2012 for an average 40-hour work week)

Trooper	\$56,263 to \$70,483
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Trooper First Class	\$74,007 to \$77,754
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Sergeant	\$76,096 to \$90,424
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New Jersey¹¹ (Effective July 1, 2007 for an average 40-hour work week)

Trpr/Trpr II/Trpr I	\$53,723 to \$88,401
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Srgnt to Det. Srgnt 1 st Class	\$70,338 to \$102,590
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Connecticut (Rates as of June 30, 2012)

Trooper/Trooper First Class	\$53,340 to \$82,856
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Sergeant	\$80,698 to \$91,586
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Master Sergeant	\$81,447 to \$96,220
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Delaware (As of July 1, 2012 for an average 40-hour work week)

Trooper/Trooper 1 st Class	\$53,049 to \$77,024 (in 30 th year)
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Corporal to M. Crpl	\$62,195 to \$113,034 (in 32 nd year)
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Sergeant	\$75,615 to \$122,993 (in 34 th year)
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Rhode Island (May 1, 2011 through April 30, 2012 for an average 42-hour work week)

Trooper/Sr. Trpr/Det. Trpr	\$50,799 to \$65,935
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Corporal/Det. Corporal	\$66,018 to \$72,594
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Sergeant/ Det. Sergeant	\$73,201 to \$80,053
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⁹ The New York CBA had different salaries for different counties. The panel used the “all other locations” category, which had a starting salary that was \$1,543 less than the highest counties’ starting salary (which was for Nassau and Suffolk counties).

¹⁰ The Association referenced the ranks as Trooper, Sergeant, and Master Sergeant. The panel’s review of the relevant CBA indicated that the ranks were Trooper, Trooper First Class, and Sergeant.

¹¹ Although the Association submitted two state trooper collective bargaining agreements for New Jersey effective June 1, 2004 through June 30, 2008 (one for troopers, the other for sergeants), and although those CBAs contained salary charts, the panel found the New Jersey CBAs to be somewhat dated.

Vermont¹² (July 1, 2012 through June 30, 2013 for an average 40-hour work week)
State police < lieutenant \$35,360 to \$115,731

Maine¹³ (August 11, 2011 through June 30, 2013 for an average 40-hour work week)
State police \$32,323 to \$64,875

New Hampshire -- Although the State submitted the collective bargaining agreement for New Hampshire effective September 30, 2011 through June 30, 2013, and although that CBA referenced New Hampshire's eight-step, thirty-five grade salary schedule, no such schedule was submitted in evidence. Accordingly, the panel could not meaningfully utilize New Hampshire in its comparison.

Based on the foregoing, and after considering the totality of the evidence and the parties' arguments, it is the informed opinion of the panel that troopers' salaries warrant some upward adjustment.

III THE INTEREST AND WELFARE OF THE PUBLIC.

It is a point of pride for the troopers that notwithstanding their understandable disappointment in the State's denial of their request for a raise and in some recently enacted legislation that affects their anticipated future compensation and/or retirement benefits, that there was not even the slightest hint by the State that troopers have failed to perform in any way short of the division's creed that being a trooper "is a call of honor[;] [i]t requires unselfish devotion to duty, the highest type of honesty and downright courage," Rhode Island State Police 2011 Annual Report at 1 (Exhibit A-11). Nevertheless, the panel did not attribute much weight to the

¹² Although the State submitted the collective bargaining agreement for Vermont that was effective July 1, 2011 through June 30, 2013, and although that CBA contained Vermont's state police pay plan, the panel could not determine which pay grades corresponded to the various ranks. Accordingly, other than calculating the lowest and highest possible wages on the plan the panel was somewhat limited in its comparison of Vermont.

¹³ Although the State submitted the collective bargaining agreement for Maine effective August 11, 2011 through June 30, 2013, and although that CBA contained Maine's state police "Standard Salary Schedule for State Police 28 Day," the panel could not determine which pay grades corresponded to the various ranks. Accordingly, other than calculating the lowest and highest possible salaries the panel was somewhat limited in its comparison of Maine.

testimony that “several” troopers were discussing leaving the department. With all due respect to those troopers, neither their interest in exploring employment elsewhere nor the fact that one trooper has already left to work with the Massachusetts State Police rises to the level of implicating the interest and welfare of the public. That said, the panel did not agree with the State’s intimations that the interest and welfare of the public are exclusively confined to monetary considerations, especially when it comes to the delicate relationship between a State’s citizenry and its police force. Indeed, the panel wholeheartedly agreed with the Association’s claim that “it is in the interest and welfare of the public for the State to maintain and foster a State Police force that is adequately compensated and valued by the State authorities.”

Cognizant that potential expenditures of state funds is always a serious concern, and given the State’s forthright concession that its concern here was not so much its inability to pay but its being able to prioritize a limited amount of funds, the panel found this factor to be evenly balanced. The mere fact that the State could pay a wage increase does not translate into an entitlement to that wage increase.

IV COMPARING THE PECULIARITIES OF STATE POLICE EMPLOYMENT IN REGARD TO OTHER TRADES OR PROFESSIONS, SPECIFICALLY, THE HAZARDS OF EMPLOYMENT; PHYSICAL QUALIFICATIONS; EDUCATIONAL QUALIFICATIONS; MENTAL QUALIFICATIONS; AND JOB TRAINING AND SKILLS.

The Association argued that “state troopers are significantly different than other state employees and should not be packaged together with them in determining wage increases.” Although the panel was persuaded, for the reasons provided in the Associations’ memoranda, that there are meaningful differences in the peculiarities of troopers’ employment as compared to most other state employees, the panel concluded that this factor weighed only very slightly in favor of a wage increase at this time.

V
CONSIDERATION OF OTHER FACTORS.

The Association argued that certain legislation reduced troopers' overall compensation and that its wage proposal thus constituted "retrograde bargaining, an attempt to reduce the State Troopers' losses . . . as distinguished from trying to advance compensation," Post-Hearing Brief Filed on Behalf of the Rhode Island State Troopers Association, at 3. Although the panel understands the Associations' characterization of its motivation, any reduction in the troopers' alleged losses would of necessity come from a wage increase. Accordingly, the panel viewed this proceeding simply as a wage dispute occurring against a broader backdrop in which there are many moving parts. In any event, the panel considered but ultimately gave relatively little weight to the Association's argument that troopers deserve a wage increase to offset losses occasioned by recently adopted legislation. The Association cited R.I.G.L. § 36-4-17.2 and P.L. 2011, ch. 408, § 13 in support of its argument that troopers "have suffered devastating losses in their earnings and their benefits impacting their financial security," Post-Hearing Brief Filed on Behalf of the Rhode Island State Troopers Association, at 12.

Section 36-4-17.2 provides that "[b]eginning on July 1, 2011, . . . there shall be no further longevity increases for state employees; provided, however, for employees with longevity provisions pursuant to a collective bargaining agreement in effect on June 1, 2011, longevity increases shall cease beginning on July 1, 2011 or beginning upon the expiration of the applicable collective bargaining agreement, whichever occurs later." Troopers are state employees who were entitled to receive longevity increases pursuant to a collective bargaining agreement in effect on June 1, 2011. Accordingly, at the expiration of their CBA, that is, after April 30, 2013, further longevity increases for troopers ceased. However, because this legislation did not impact troopers during the wage year at issue in this proceeding, that is, May 1, 2012

through April 30, 2013, the panel gave this factor no weight. Contrarily, because P.L. 2011, ch. 408, titled “An Act Relating to Public Officers and Employees—Retirement System—Contribution and Benefits,” section 13 of which was conceded by the State to have “effect[ed] changes in the state police pension terms,” impacted a troopers’ overall compensation package during the relevant time period, it was considered by the panel but not heavily so.

Even assuming its accuracy, the Panel attributed no weight to the Association’s argument that while the state police budget “constitute[d] a miniscule portion of the State budget, the work performed by State Troopers generate[d] substantial revenues for the State.” Although revenue generation may be a concomitant of trooper work, troopers do not work on a commission basis and the relative amount of the funds their works generates to the state’s overall budget did not strike the panel as particularly relevant. Likewise, even if true, the panel attributed no weight to the fact that “[o]ut of a State budget of more than \$8 billion, an award of a reasonable wage increase to the Association would be little more than a rounding error.” An award is never warranted because its impact on the state budget is negligible.

The parties quite actively disputed whether the panel could consider the State’s ability to pay as part of its analysis—the Association argued that because that factor is not specifically listed in the State Police Arbitration Act, it may not; the State argued that pursuant to that act, the panel could consider the State’s ability to pay as an un-enumerated factor or as part of the public interest. The panel overruled the Association’s objection at the hearing and abides by that ruling. The statute enumerates certain factors, which among others, are to be given weight. While the panel acknowledges that ability to pay is not expressly included within the act, the panel was persuaded that ability to pay was appropriately considered as one of the “other” factors relevant to the proceeding or as a component of the interest and welfare of the public factor. Accordingly,

the panel gave weight to the State's ability to pay, and its arguments in that regard, in its determination. *See generally Gilbane Bldg. Co. v. Board of Trustees of State Colleges*, 267 A.2d 396, 400, 107 R.I. 295 (R.I. 1970) ("we share Gilbane's interest that public funds be safeguarded"); *A.F. Lusi Constr., Inc. v. Rhode Island Dept. of Administration*, C.A. No. PB 2007-1104 (Superior Court of Rhode Island, May 7, 2007) (Silverstein, J.) ("a taxpayer has an interest in making sure that public funds are spent efficiently"); *In re Boston Herald, Inc.*, 321 F.3d 174, 200 (1st Cir. 2003) (wherein the Court emphasized "'the public's strong interest in how its funds are being spent in the administration of criminal justice'" (citing *United States v. Suarez*, 880 F.2d 626, 631 (2d Cir. 1989))).

As stated above, over the Association's objections, the panel weighed the State's ability to pay in its assessment of this wage dispute. However, the State forthrightly conceded on pages 18 and 31 of its memorandum that "[i]t is not the State's position that it does not have the dollars required to fund a wage increase for the Union for fiscal year 2013. Rather, it the State's position that it has allocated and re-allocated available revenue among the three (3) 'buckets' to the extent possible, and that any further re-allocation of revenue to fund a wage increase for the state police for fiscal year 2013 will necessarily mean that those funds are not available to further policies with regard to job growth, education, human service programs, and aid to cities and towns. . . . The State's priorities, as reflected in the Governor's budget, should not be disturbed by an award of increased wages to a single state employee bargaining unit." Although the panel respects the difficult policy choices that the chief executive must make in allocating limited funds, the State is well aware that it is inherent in the interest-arbitration process that not all, and possibly none, of the priorities of the parties might be satisfied. This is not to say that the State's arguments and

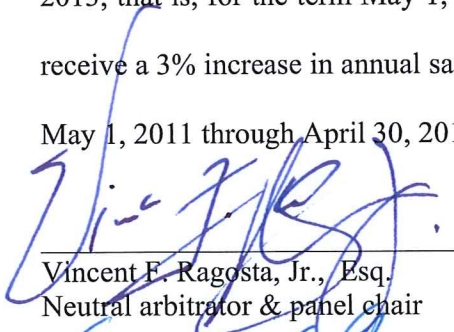
evidence in this regard were not given due consideration but only that they were not given dispositive weight.

The State also submitted in evidence the actual amounts earned by troopers during the 2009 through 2011 calendar years, inclusive of regular earnings, overtime, holiday pay, road details, and other earnings. While the State persuasively argued that troopers are able to, and do, earn very respectable total annual amounts, the panel was limited in its ability to utilize this data because there was no similar data from other states, or other bargaining units within the state, with which to compare it. Nevertheless, in its deliberations the panel was cognizant of the fact that troopers on the whole have the opportunity to earn significant amounts beyond their regular salary.

The panel attributed some weight to the facts that all other state employees and Providence police officers received a 0% wage increase for the relevant time period.

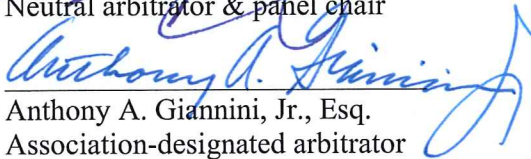
SUMMARY OF AWARD

For the third year of the expired CBA that was effective May 1, 2010 through April 30, 2013, that is, for the term May 1, 2012 through April 30, 2013, otherwise eligible troopers shall receive a 3% increase in annual salary relative to the annual salary that they received for working May 1, 2011 through April 30, 2012.




Vincent F. Ragosta, Jr., Esq.
Neutral arbitrator & panel chair

Dated: September 13, 2013



Anthony A. Giannini, Jr., Esq.
Association-designated arbitrator

Dated: September 13, 2013



Susan K. Rodriguez, Esq.
State-designated arbitrator

(Dissenting)

Dated: September 9, 2013